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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Long-term financial obligations of the United Nations with regard to the enforcement of sentences

Report of the Secretary-General**

Summary

The General Assembly, in its resolution 55/226 of 23 December 2000, requested the Secretary-General to submit to it at its fifty-sixth session a report on the likely long-term financial obligations of the United Nations with regard to the enforcement of sentences. Further, by its resolution 56/248 B, the Assembly requested the Secretary-General to submit to it at its fifty-seventh session a report on the same question. The present report is being submitted in response to those resolutions.

The General Assembly is requested to take note of the present report.

* A/57/150.

** The delayed submission of this report is attributable to the extensive consultations that were required between Headquarters and the Tribunal.

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I. Introduction

1. The long-term enforcement of prison sentences imposed by the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 will require resources to meet costs arising directly and immediately from the enforcement of sentences, as well as costs arising from the existence and functioning of mechanisms and arrangements dealing with a number of legal and practical issues that arise, or might arise, under the regime for the enforcement of sentences laid down in and under the Tribunal's statute.

2. In identifying legal and financial elements relating to the enforcement of sentences for which the United Nations will need to provide resources, it is estimated that an annual provision of $1,015,800, at current rates, would be required to meet maintenance costs to support a projected 50 convicted persons, based on the present arrest and conviction rates, as well as to cover costs that may arise out of the need to, inter alia, relocate, transfer and discharge prisoners, review convictions and conduct periodic inspections of prison facilities.

3. It is also evident that consideration will have to be given to meeting costs that may arise upon the completion of sentences. Based on a set of assumptions, these costs, which could include costs relating to the relocation of individuals to suitable destinations, are currently estimated at $141,000.

4. While it is possible that some costs may arise in the long term in connection with the settlement of cases in which a miscarriage of justice has been found to take place, these are not addressed in the present report, as they fall outside the scope of costs arising from the enforcement of sentences.

5. Article 26 of the statute of the International Tribunal for Rwanda provides:

> "Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda."

6. On the basis of this provision, the United Nations, acting through the International Tribunal for Rwanda, has signed agreements to date with Mali, Benin and Swaziland concerning the enforcement of sentences.

7. Although a number of African States (including the three States with which agreements have been signed) have indicated their willingness to take convicted persons from the Tribunal, they have solicited the assistance of the Tribunal in making improvements to the prison accommodation in which those convicts would be held, in order to bring the accommodation up to minimum international standards. Provisions were included in the approved 2001 budget of the Tribunal for upgrading prison facilities in those countries taking convicted persons from the Tribunal. They have also sought the assistance of the Tribunal in sharing the upkeep and maintenance costs arising from the enforcement of those sentences.

8. The Advisory Committee on Administrative and Budgetary Questions, in its report on the financing of the Tribunal for the biennium 2002-2003, stated that it had been informed that of the $213,500 budgeted in 2001 for upgrading prison facilities, only $43,300 had been expended (A/56/666, para. 49). The Tribunal did not fully utilize these resources because of uncertainty stemming from an interpretation that the statute did not include provisions for upgrading prison facilities. Accordingly, no provisions were included in the proposed resource requirements for 2002-2003.

II. Likely long-term financial obligations of the United Nations with regard to the enforcement of sentences of the International Tribunal for Rwanda

9. A distinction can be made between two kinds of long-term costs that will, or might, fall to the Organization and that arise, or might arise, from the enforcement of the Tribunal's sentences. On the one hand, there are costs arising directly and immediately from the enforcement of sentences and that are currently visible as such. On the other hand, there are

costs arising from the existence and functioning of mechanisms and arrangements dealing with a number of legal and practical issues that arise, or might arise, under the regime for the enforcement of sentences laid down in and under the Tribunal's statute. While the costs in the latter category currently do not appear to arise from the enforcement of sentences, it may become apparent that they do once the core tasks of conducting trials and hearing appeals are completed.

A. Annual costs arising directly or indirectly from the enforcement of sentences: $1,015,800

1. Maintenance costs ($725,000)

10. The statute of the Tribunal does not directly address the issue of allocation of costs incurred in enforcing sentences of imprisonment pronounced by the Tribunal, in particular the issue of whether those costs are to be borne by the United Nations or by the States in which the sentences are served. Since States that agree to enforce sentences handed down by the Tribunal are, in effect, agreeing to assume a burden for the United Nations and to provide a service to it, the costs arising directly from the provision of that service may lawfully and properly be borne by the Organization, if the States concerned are unable or unwilling to meet them.

11. The agreements with Benin, Mali and Swaziland are based on a model agreement on the enforcement of the Tribunal's sentences, prepared by the Registry of the Tribunal in consultation with the Office of Legal Affairs. Article 11, paragraph 1, of the model agreement provides:

> "The Tribunal shall bear the expenses related to the transfer of the convicted person to and from the requested State, unless the parties agree otherwise. The requested State shall pay all other expenses incurred in the enforcement of the sentence, unless otherwise agreed by the parties."

12. Changes were made to this provision during the course of negotiations with Benin, Mali and Swaziland. Article 11, paragraph 1, of the Agreement with Benin reads:

> "The Tribunal shall bear the expenses related to the transfer of the convicted person to and from the requested State, unless the parties agree otherwise. The requested State shall pay all other expenses incurred in the enforcement of the sentence."

Article 11, paragraph 1, of the agreements with Mali and Swaziland reads:

> "Unless the parties agree otherwise:
>
> (a) The Tribunal shall bear the expenses related to (i) the transfer of the convicted person to and from the requested State; (ii) the repatriation of the convicted person upon completion of his/her sentence; (iii) in the case of death, repatriation of the body of the convicted person;
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> (b) The requested State shall pay all other expenses incurred in the enforcement of the sentence."

13. Notwithstanding the terms of these agreements, the States concerned have indicated that they are not in a position to accept convicted persons from the Tribunal unless the United Nations agrees to bear at least certain costs that would be incurred in the enforcement of their sentences, in particular the cost of their upkeep. This is due to the fact that the States, as a consequence of their agreements with major international financial institutions, are subject to strict monitoring of their public spending. Any increase in expenditure requires the approval of those institutions. Given the need to comply with minimum international standards relating to the conditions and treatment of prisoners, significant increases in the States' prison budgets would be required if they had to bear the cost of basic maintenance and upkeep for prisoners transferred by the Tribunal. Hence the request for the United Nations to reimburse costs for meals, bedding, basic toiletries (soap and buckets for bathing) and clothing and for any specialized medical or dental treatment that prisoners might need that cannot be provided within the prison. (It should be noted in this connection that a number of prisoners are suffering from serious or terminal illnesses.)

14. With the exception of these costs and the costs enumerated in article 11, paragraph 1 (a), of the agreements with Mali and Swaziland, the States concerned have indicated that they are prepared to bear all other expenses incurred in the enforcement of the sentences of convicted persons who might be transferred to them by the Tribunal, such as the cost of

overall security arrangements, utilities and basic medical care, and other miscellaneous expenses.

15. Accordingly, on 15 November 2000, the Tribunal provided the Government of Mali with an undertaking that it would bear the costs of bedding, toiletries, clothing, telephone cards, meals, specialized medical care and incidentals arising from enforcement of the prison sentences of convicted persons who might be transferred to that State to serve their sentences. This undertaking constitutes an "agreement otherwise" between the parties, under the terms of article 11, paragraph 1, of the agreement with Mali, and, accordingly, has the effect in law of modifying the allocation of costs between the United Nations and Mali set out in that paragraph. It is likely that it will be necessary for the Organization, through the Tribunal, to provide broadly similar undertakings to other States in Africa with which the Organization has concluded, or might in the future conclude, agreements on the enforcement of the Tribunal's sentences.

16. If the United Nations agrees with a State to bear any or all of the costs arising from the enforcement of the Tribunal's sentences, the issue arises of which costs may appropriately be the responsibility of the United Nations.

17. It would be proper and lawful for the United Nations to bear costs arising from providing prisoners serving sentences imposed by the Tribunal with a regime of imprisonment that is consistent with that enjoyed by other, comparable prisoners within the prison system of the State in which they are serving their sentences. This is so even though that regime might, in certain respects, exceed international minimum standards. On the other hand, should that regime in any respect fall short of international minimum standards, it would be a lawful and proper element of expenditure for the Organization to pay for prisoners serving sentences imposed by the Tribunal to be provided with a regime that complies with international minimum standards in the respect concerned. This is so even though the regime of imprisonment that those prisoners consequently enjoy will, in the respect concerned, exceed normal standards in the State concerned.

18. Given the differences that exist in prison standards in different countries around the world, and given the differing capacities of States to bear the cost of maintenance and upkeep for prisoners transferred to them by the Tribunal, it is not feasible to provide a definitive estimate of the long-term costs arising from the enforcement of sentences. The estimates provided below, therefore, are based on a number of assumptions.

19. Based on the agreement with Mali, the cost could be estimated at approximately $20 per prisoner per day for bedding, toiletries, clothing, telephone charges, meal supplements, incidentals, medicines, specialized medical care and maintenance; an additional $1,000 per prisoner per month for medical care and medicines for HIV patients; and an estimated $16,800 annually for inspection of prison conditions in the States enforcing the sentences.

20. The number of convicted persons, based on working assumptions made for the purpose of this report, is projected to be 50 by the year 2008. This projection is based on the number of actual and anticipated indictments, an assumed arrest rate (in respect of those not yet in custody) and an assumed conviction rate (based on the rate prevailing in trials to date).

21. The minimum annual maintenance cost for the enforcement of sentences is estimated at $725,000 based on 50 convicted persons ($365,000), of which a number would require HIV medical treatment ($360,000). The estimates relating to United Nations inspection visits during the long-term enforcement of sentences are outlined below, under "Other costs".

2. Other costs ($290,800)

22. Other costs directly or indirectly arising from the enforcement of sentences that could properly be borne by the Organization and not the States agreeing to enforce the sentences handed down by the Tribunal are summarized below (in United States dollars).

Cost of transfers to/from States	140 000
Cost of relocations between States	30 000
Inspections	16 800
Legal aid for pardons and commutations	52 000
Legal aid for review of convictions	52 000
Total	**290 800**

23. Detailed requirements, based on agreements and experiences to date, are elaborated below. It should be understood that these estimates are extremely tentative.

(a) Cost of transfers to States where sentences are to be served and/or transfer out of those States, if such transfers become necessary or desirable: $140,000

24. The cost of transfer to States where sentences are served is estimated at $140,000. The estimates are based on the assumption that there are to be 50 convicted persons requiring transfers to host countries with which agreements have been signed.

(b) Cost of relocation transfers of convicts to another State: $30,000

25. For various reasons, it may become undesirable, inappropriate or impossible for a prisoner to continue to serve his or her sentence in the State in which he/she has hitherto been held. It will therefore be necessary to remove the prisoner from that State and transfer him/her to another State, where he/she may continue to serve his/her sentence. The costs of such transfers, if they become necessary or desirable, are estimated at $30,000. This is based on the assumption that 10 per cent of the estimated 50 convicted persons may need to be relocated to a different prison facility in a separate host country and includes requirements for an accompanying officer. Both the model agreement for the enforcement of the Tribunal's sentences and all three of the agreements concluded to date provide for the cost of such transfers to be borne by the Organization unless the parties subsequently agree otherwise.

(c) Cost of carrying out inspections of conditions of imprisonment: $16,800

26. In accordance with article 26 of the Statute of the Tribunal, imprisonment is served in a State designated by the Tribunal, "subject to the supervision of the International Tribunal". In accordance with rule 103 of the Tribunal's Rules of Procedure and Evidence, inspections of the conditions of detention and treatment of convicted persons are carried out either by the Tribunal itself or by such body or person as it may designate for that purpose.

27. The model agreement on the enforcement of the sentences of the Tribunal, as well as the agreements concluded with Benin, Mali and Swaziland, provides for inspections to be carried out by the International Committee of the Red Cross (ICRC) or by such other body or person as the Tribunal may designate for that purpose.

28. According to preliminary discussions held by the Tribunal with representatives of ICRC who have already been monitoring the Tribunal's current detention facility in Arusha, it is anticipated that there will be no need for an agreement to enable ICRC to conduct inspection visits in the States where the Tribunal's sentences are enforced. ICRC has also indicated that since the Tribunal's prisoners are not political prisoners, it is prepared to carry out "tracing" functions in those States, at its own expense, but does not plan to undertake any "monitoring" functions.

29. Arrangements have been made with the United Nations Development Programme (UNDP) office in Mali to liaise, on behalf of the Tribunal, with the relevant authorities of the Mali penitentiary system with regard to payment for meals and the provision of medical care. UNDP is being reimbursed for its administrative costs. As problems arise, UNDP will promptly inform the Tribunal, and the Tribunal will take the necessary action on the issue.

30. In cases in which an agreement with ICRC cannot be concluded, it is expected that experts, preferably from specialized United Nations agencies, such as the Office of the United Nations High Commissioner for Human Rights, and/or qualified members of the Tribunal, will visit the enforcement States at least once a year for the purpose of conducting inspections, pursuant to rule 104 of the Tribunal's Rules of Procedure and Evidence, and to discuss with the relevant authorities issues relating to the conditions of imprisonment. It is anticipated that the travel costs for any relevant United Nations staff member would be approximately $2,800 per trip. Assuming a total of six trips to visit three prison facilities, the annual cost is estimated at $16,800.

(d) Cost of legal assistance for prisoners making submissions regarding pardon, commutation of sentence or early release: $52,000

31. Pursuant to the laws of the State in which a convicted person is imprisoned, the convict may become eligible for pardon, commutation of sentence or early release before the terminal date of the sentence

imposed by the Tribunal. Article 27 of the statute provides that in such an event the President of the Tribunal, in consultation with the judges, shall decide, on the basis of the interests of justice and the general principles of law, whether or not the prisoner should or should not be pardoned, have his/her sentence commuted or be granted early release. The President has issued a Practice Direction to establish internal procedures for the implementation of these provisions.

32. Costs to the Organization may arise from the need to assign counsel to prisoners who wish to have legal assistance for the purpose of preparing and submitting submissions to the President under these procedures and who do not have sufficient means to pay for such assistance themselves.

33. It is assumed that in any one year 10 per cent of the estimated 50 convicted persons may choose to make submissions regarding commutation of sentence or pardon, requiring a provision of $52,000.

(e) Cost of legal assistance for prisoners seeking review of conviction: $52,000

34. A new fact may be discovered that was not known at the time of the trial of a person convicted by the Tribunal or at the time he or she lodged an appeal against conviction. Had that fact been known at the time, it may be that the Trial Chamber or Appeals Chamber would not have found the accused guilty or would have allowed the appeal against conviction. In such an event, article 25 of the statute of the Tribunal provides that the convicted person may submit an application to the Tribunal for review of the judgement.

35. Costs may arise for the Organization as a result of the need to assign legal assistance to prisoners who have insufficient means to pay for counsel to represent them in the submission of an application for review. It is assumed that in any one year 10 per cent of the estimated 50 convicted persons may seek review of their convictions. A provision of $52,000 would cover the associated costs.

B. Costs arising upon the completion of sentences ($141,000)

(a) Cost of the disposal of the remains of deceased prisoners: $104,600

36. A person convicted by the Tribunal may die before he/she finishes serving his/her sentence, and the State enforcing the sentence may not be prepared to bear the cost of making arrangements, in consultation with the immediate family members, for the disposal of his/her remains. The Organization may then properly agree to meet the costs that would have been incurred by the State in the disposal of the remains.

37. The agreements concluded with Mali and Swaziland make provision for this purpose. Specifically, they provide that, unless the parties subsequently agree otherwise, the Organization will reimburse those Governments for any costs they might incur in connection with removal of the bodies of deceased prisoners from the States concerned. While the agreement with Benin does not specifically address the eventuality of a prisoner's death, it is legally to similar effect.

38. The estimate of $104,600 is based on the assumption that 75 per cent, or approximately 37 of the estimated 50 convicted persons, may pass away while serving their sentences and that the Governments of the States concerned will incur costs in connection with the removal of their mortal remains from those States. This assumption is based on the average length of sentences that have been imposed and on the fact that a significant number of detainees suffer from serious health problems.

(b) Cost of removing a discharged prisoner from the State of enforcement and transferring that prisoner to a suitable destination: $36,400

39. A discharged prisoner, having completed his/her sentence, may be unable or unwilling to find a State in which to reside following release. The State that enforced the sentence may not be willing for him/her to remain in its territory and may take steps to remove the person from its territory and transfer him/her to another State that is willing to receive him/her. In such an event, the Organization may properly agree to assume the costs involved.

40. The agreements with Mali and Swaziland make provision for this purpose. While the agreement with Benin does not specifically address the eventuality of a prisoner's release, it is legally to similar effect.

41. The estimate is based on the assumption that 25 per cent of the estimated 50 convicted persons, or approximately 13 prisoners, will serve out their terms and will need to be transferred to their home countries or to States willing to accept them.

III. Identifying mechanisms to deal with issues arising in the course of sentence enforcement

42. When the tasks of conducting trials and hearing appeals are completed and the mandate of the Tribunal has been fulfilled, it will fall to the Security Council to decide what should happen with regard to the enforcement of sentences that the Tribunal has handed down. In particular, at that time the Security Council would need to decide whether the prisoners who have not completed their sentences should continue to serve the sentences handed down by the Tribunal, and, if so, whether the legal regime governing the enforcement of sentences should be along the lines of that currently laid down in the Tribunal's statute or whether another, different regime should be put in place for that purpose.

43. Assuming that the Security Council would be of the view that prisoners should continue to serve their sentences as handed down by the Tribunal, and that the legal regime governing the enforcement of those sentences should be that laid down in the Tribunal's statute, or at least be broadly similar to it, the long-term financial obligations of the United Nations would continue to consist of the costs described in section II.A above. It would also be necessary in that event to preserve the mechanisms currently existing within the Tribunal to deal with issues that will, or might conceivably, arise under that regime for the enforcement of sentences. Alternatively, it would be necessary to create new mechanisms to deal with those issues or else to make use of other suitable mechanisms that might already exist outside the Tribunal. Costs would be associated with the existence, operation and use of those mechanisms. These mechanisms are listed below.

(a) *A mechanism to supervise prisoners' condition of detention*: Provisions for inspections are currently laid down in article 26 of the statute of the Tribunal and rule 104 of its Rules of Procedure and Evidence. Under rule 104, inspections are carried out either by the Tribunal itself or by such body or person as it may designate for that purpose. In addition, a mechanism to receive, evaluate and take action on reports on inspections would need to be in place. At present the Rules of Procedure and Evidence do not indicate the person or organ within the Tribunal that is to evaluate reports on inspections and decide on any action that might need to be taken. Nor, to date, has the President of the Tribunal issued a Practice Direction to establish internal procedures on the matter. The agreements with Benin, Mali and Swaziland stipulate that the President of the Tribunal will fulfil this role.

(b) *A mechanism to decide questions of pardon, commutation of sentence and early release*: Provisions are made for this purpose in article 27 of the statute, in accordance with which the President of the Tribunal decides such questions, in consultation with judges.

(c) *A mechanism to identify another State to which a prisoner may have to be transferred to complete his/her sentence*: Provisions are made for this purpose under article 26 of the Tribunal's statute and in rule 103 A of its Rules of Procedure and Evidence. Further, a Practice Direction exists, issued by the President of the Tribunal, establishing an internal procedure for determining the State in which a person convicted by the Tribunal is to serve his/her sentence. In this connection, the actual transfer of the prisoner currently falls to the Registrar, who is charged with making and implementing arrangements for the transfer of the convicted person from the State where he/she is currently serving his/her sentence to the State that is to continue enforcing that sentence.

(d) *A mechanism to decide on applications for review of conviction*: Provisions are made for this purpose in article 25 of the Tribunal's statute and in rule 121 of the its Rules of Procedure and Evidence. In accordance with those provisions, it is for either a Trial Chamber or the Appeals Chamber, as appropriate, to decide whether to grant such an application for review and, if it is granted, to conduct a review of the original judgement.

(e) *A mechanism to decide upon claims for compensation for miscarriage of justice*: Although the

United Nations, pursuant to established human rights law, would be under an obligation to pay compensation to an individual who had been improperly convicted as a result of a miscarriage of justice, no specific mechanism currently exists within the Organization for receiving claims for compensation, deciding on those claims and making awards. In particular, the Tribunal itself does not at present enjoy the requisite legal powers to adjudicate applications for and award compensation in such cases. The Secretary-General has brought to the attention of the Security Council a letter from the President of the Tribunal indicating that it is the wish of the judges that the Security Council amend the statute to enable the Tribunal to award compensation. The Security Council has yet to take action on the matter.

IV. Conclusions and recommendations

44. **In identifying the legal and financial elements relating to the long-term enforcement of sentences imposed by the International Tribunal for Rwanda, it is apparent that the United Nations will need to make adequate provisions, currently estimated at $1,015,800 annually, for costs that relate directly to the enforcement of sentences and for expenses that may arise during the period of enforcement, which pertain to the transfer, relocation and movement of prisoners, review of their convictions, consideration of their possible early release and inspection of their conditions of detention. Additional consideration will also be required for expenses that may arise upon the completion of sentences, estimated at $141,000, as a result of the relocation of prisoners to suitable destinations or the disposal of their remains if they pass away while serving sentences.**

45. **The General Assembly may wish to take note this report and request the Secretary-General to ensure that due consideration continues to be given in future International Tribunal for Rwanda budget proposals for the provision of resources for the biennium concerned relating to the enforcement of sentences.**